

### **REMARKS**

Claims 47-51, 72, 73, and 93 were pending in this application. By this response, claims 47, 73, and 93 have been amended to incorporate the features of claim 51, and claim 51 has been cancelled. New claims 94-96 have been added. The amendments to the claims and the new claims are supported throughout the specification, and particularly in FIGS. 1 and 2 of the Application as filed. No new matter has been added. Amendment or cancellation of any of the claims is not to be considered a dedication to the public of any subject matter.

Thus, claims 47-50, 72, 73, and 93-96 are currently under consideration. Reconsideration of these claims is requested in view of the amendments and the following remarks.

### **INFORMATION DISCLOSURE STATEMENTS**

The Applicants thank the Examiner for acknowledging the Information Disclosure Statements filed 4/15/2009 and 12/31/2008.

Applicants respectfully request that the Information Disclosure Statements dated 4/26/2007 and 6/29/2007 be considered, and the PTO Forms 1449 be initialed and returned with the next Action.

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 102**

#### **Claims 47-51, 72, 73, and 93**

Claims 47-51, 72, 73, and 93 currently stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,547,821 to Taylor et al. ("Taylor").

Although the Applicants respectfully disagree with the rejection, the Applicants have amended the independent claims to clarify the structural limitations of the method claims, as requested by the Examiner in the final Office Action of April 29, 2009. The Applicants point out that the amendments made incorporate features previously recited in dependent claim 50, which Attorney Docket No. 10078-703.201

was also rejected over Taylor in the previous Office Action, though not specifically addressed. These features are not shown or even suggested in Taylor.

All of the currently pending claims (e.g., claims 47-50, 72, 73, and 93-96) are patentable over Taylor. The pending claims all recite steps absent and not suggested by Taylor. In particular, the applicant's pending claims recite the steps of providing a device comprising an *inflatable partitioning element with a peripheral edge having at least one anchoring element and anchoring the peripheral edge of the inflatable partitioning element to a wall of the ventricular chamber*.

Instead, Taylor teaches an inflatable ventricular displacement device, as illustrated in FIGS. 12A-13. This device is inflated in the apex of the heart to displace fluid from the heart.

The volume displacement devices taught by Taylor does not include a peripheral edge having at least one anchoring element. Instead, the devices taught by Taylor include an apical end cap or other fixture for securing it to the apex of the ventricle (e.g., Col. 17, lines 52-58; col. 18, lines 1-8). Thus, Taylor does not teach anchoring the peripheral edge of the inflatable partition element to a wall of the ventricle chamber to secure the device to the wall of the ventricle. Taylor only describes apical anchoring, rather than peripheral anchoring.

Furthermore, Taylor's device does not partition the ventricle into a productive chamber and a non-productive chamber by spacing a distal face of the device from the ventricular wall, as recited by the Applicants pending claims. Taylor's inability to form separate productive and non-productive chambers in part as a consequence of the fact that Taylor does not peripherally anchor the device around the ventricular wall. By anchoring only in the apex, the inflated device will displace blood from the region taken up by the balloon, but does not form a separate non-productive chamber. As discussed previously, the adjacent to Taylor's device (between the wall of the inflated balloon and the ventricular wall) is open to the rest of the ventricle. Moreover, as the heart beats and the ventricle contracts, this region will open and close, and when open is continuous with the region of the rest of the ventricular chamber (the non-apical productive region).

For example, in FIGS. 12A-B of Taylor, that the walls of Taylor's inflatable device "closely approximate the appropriate ventricular geometry of the healthy heart" (col. 17, lines

13-15), but are not anchored peripherally. In the Office Action of April 29, 2009, the Examiner suggests that the out wall surface of the balloon is an “anchoring element”, but this is improper, since it does not give any patentable weight to the recited anchoring element in the Applicant’s claims. A mere outer wall surface cannot be an “anchoring element” as recited in the pending claims, since a wall does not “anchor.” Taylor does not teach peripherally anchoring the inflatable device to secure the device to the wall of the ventricular chamber, as recited in the claims.

Since Taylor does not teach all of the features recited in method claims 47-50, 72-73, 93 and new claims 94-96, Taylor cannot anticipate these claims. The Applicants respectfully request withdrawal of the 35 U.S.C. §102(e) rejection of these claims over Taylor, and allowance of all of the pending claims.

#### Claims 48 and 51

Applicants wish to draw particular attention to claims 48 and 51, which recite features not taught or even suggested in Taylor. For example, claim 48 recites methods in which the devices further comprise a *distal extending support element which spaces the partitioning element*. Neither of these claims was separately addressed by the Office Actions of October 24, 2008 or April 29, 2009. As mentioned above, to expedite prosecution, independent claims 47, 73 and 93 have been amended to incorporate features of claim 51, and claim 51 has been cancelled.

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### CONCLUSION


In light of the remarks set forth above, Applicants respectfully request the Examiner expedite the prosecution of this patent application to issuance. If it is determined that a telephone conference would aid in the prosecution of this application, the Examiner is invited to telephone the undersigned at (650) 287-2164.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 50-4050 referencing docket no. 10078-703.201. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

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By:

  
Richard D. Shoop  
Registration No. 45,763

SHAY GLENN LLP  
2755 CAMPUS DRIVE, SUITE 210  
SAN MATEO, CA 94403  
TELEPHONE: 650.287.2164  
FACSIMILE: 650.212.7562